PUBLIC PROSECUTOR v. FOONG CHEE CHEONG

[A.Cr.J. (Gill J.) March 12, 1969]

[Kuala Lumpur — Criminal Appeal No. 112 of 1968]

Criminal Law and Procedure — First information report — Not reduced to writing — Whether a ground for throwing out a case — Power of police to investigate — Evidence of interested witnesses — Entitled to credence until cogent grounds for disbelief are shown — Criminal Procedure Code (F.M.S. Cap. 6), ss. 107 & 113(ii).

Penal Code, s. 385 — Extortion — Oral complaint to police.

Evidence — Corroboration — Interested witnesses Credence of.

In this case the respondent had been charged with extortion. The complainant had made an oral report and the police had acted on it. The learned magistrate acquitted the respondent without calling on his defence on the grounds: (a) the report of the complainant had not been reduced to writing in the first instance and the absence of the first information report made the arrest of the accused void in law; (b) the only evidence that could corroborate the evidence of the complainant was that of his employee and relative who was very much an interested party. The Public Prosecutor appealed.

Held, allowing the appeal: (1) however important a document a first information report is, it can never be treated as a piece of substantive evidence and the fact that no first information report was made is not itself a ground for throwing out a case;

(2) there is no legal presumption that an interested witness should not be believed; he is entitled to credence until cogent reasons for disbelief can be advanced in the light of evidence to the contrary and the surrounding circumstances.

Cases referred to:—

(1) *Vellasamy* v. *Rex* [1941] M.L.J. 233, 236.

(2) *Emperor* v. *Khwaja Nazir Ahmad* A.I.R. 1945 P.C. 18, 20.

(3) *Balasingham* v. *Public Prosecutor* [1959] M.L.J. 193.

MAGISTRATE'S CRIMINAL APPEAL

Mohamed Nizar bin Idris (Deputy Public Prosecutor) for the appellant.

Anthony Gomez for the respondent.

Cur. Adv. Vult.

Gill J.: The respondent to this appeal was tried in a magistrate's court at Kuala Lumpur on the following charge:—

"That you on 21.8.68 at about 12.10 p.m. at Methodist Girls' School canteen Jalan Abdul Samad, in the District of Kuala Lumpur, in the State of Selangor, did put one Lem Hing @ Lim Kong Kee in fear of injury, to wit by threatening to cause bodily injury to one Tan Kim Tai, the employee of the said Lem Hing @ Lim Kong Kee, in order to the committing of extortion of cash $10 and that you have thereby committed an offence punishable under section 381 of the Penal Code."

He was acquitted and discharged at the end of the prosecution case without his defence being called. Against such acquittal and discharge, the Public Prosecutor appealed.

The evidence for the prosecution was that at about 12.10 p.m. on the day in question Lim Kong Kee (P.W.1) together with his son named Lim Kee Hoon and a relative of his, named Tan Kim Tai (P.W.2), arrived in his van No. BF9819 at the canteen of the Methodist Girls' School, Jalan Abdul Samad, Kuala Lumpur in order to deliver sweets and biscuits to the canteen keeper. After they had taken the sweets into the canteen and while the goods were being checked, the accused and another male Chinese arrived there. The accused came up to the door of the canteen with a stone in his hand, while the other remained outside and sat at a table. The accused then demanded protection money from P.W.1. P.W.1 said that he had no money, and pleaded with the accused to let him go. P.W.1 and his son were allowed to go away, get money and return to the canteen by 1.30 p.m., leaving P.W.2 with the accused. The accused told P.W.1 that if he did not return by 1.30 p.m. with the money all of them would be in trouble.

P.W.1 went with his son to the High Street Police Station where he reported the matter to Police Inspector Johari bin Haji Abdul Rahman (P.W.4). P.W.4, without reducing the report into writing as there was no time, took a $10 note from P.W.1, put his signature on it and gave it back to P.W.1 with the instruction that he was to hand it over to the accused who had demanded protection money. He also instructed detective police constable Anthony Victor (P.W.3) and police constable Zakaria, both of whom were in civilian clothes, to accompany P.W.1 in his van to the school canteen. On arrival at the school canteen, P.W.1 got down from his van with the two policemen watching him from inside the van. The accused approached P.W.1 who handed the signed $10 note to him. Immediately after that, the two policemen rushed out of the van and arrested the accused. They then took the accused and the $10 note to the police station. P.W.1 also went to the police station and then lodged a formal report which was recorded by P.W.4.

The learned magistrate acquitted the accused without calling on his defence on the ground, first, that as the report of P.W.1 had not been reduced into writing in the first instance the police had no power to act and that, consequently, the arrest of the accused was void in law; secondly, that the only evidence that could corroborate the evidence of P.W.1 was that of P.W.2 who, being an employee and a relative of P.W.1, was very much an interested party.

With respect to the learned magistrate, he was wrong in acquitting the respondent on each of the grounds which he has mentioned in his grounds of judgment. However important a

document a first information report is, it can never be treated as a piece of substantive evidence and the fact that no first information report was made is not in itself a ground for throwing out a case. The powers of the police to investigate do not depend solely on Chapter XIII of the Criminal Procedure Code. The duties of a police officer as set out in section 20 of the Police Act, 1967 include apprehending all persons whom he is by law authorized to apprehend and these duties are amplified in section 23 of the Criminal Procedure Code. Most of these duties imply a power to investigate whether there has been an information under section 107 of the Criminal Procedure Code or not. (See *Vellasamy v. Rex*[1]).

In the present case, a first information report was in fact made, but it was made orally. The inspector to whom it was made quite clearly thought that if any time was wasted in reducing the report into writing, reading it back to the informant and getting his signature, the accused might disappear from the canteen before any steps could be taken to apprehend him. Quite rightly, therefore, he took immediate action to have two detectives sent with P.W.1. When P.W.1 returned to the police station after the accused had been arrested, his report was formally reduced into writing. As investigations had already commenced before such report was reduced into writing, it became inadmissible in evidence as a first information report but it was still possible for it to be used to impeach the credit of the person making it under section 113(ii) of the Criminal Procedure Code, so that it could not be said that the accused was deprived wholly of the opportunity to cross-examine P.W.1 on it.

It is true that generally the absence of a first information report casts a cloud of suspicion and tends to weaken the prosecution case. But as was pointed out by their Lordships of the Privy Council in *Emperor v. Khwaja Nazir Ahmad*,[2] the receipt and recording of an information report is not a condition precedent to the setting in motion of a criminal investigation. Lord Porter in delivering the judgment of the Privy Council in that case went on to say:—

"No doubt in the great majority of cases, criminal prosecutions are undertaken as a result of information received and recorded in this way but their Lordships see no reason why the police, if in possession through their own knowledge or by means of credible though informal intelligence which genuinely leads them to the belief that a cognisable offence has been committed, should not of their own motion undertake an investigation into the truth of the matters alleged . . . In truth the provisions as to an information report (commonly called a first information report) are enacted for other reasons. Its object is to obtain early information of alleged criminal activity, to record the circumstances before there is time for them to be forgotten or embellished, and it has to be remembered that the report can be put in evidence when the informant is examined if it is desired to do so."

As regards corroboration, there is neither authority nor principle in support of the proposition that the evidence of a witness cannot be corroborated by his employee or relative or by any person who may be said to be an interested party. There is certainly no legal presumption that an interested witness should not be believed. He is entitled to credence until cogent reasons for disbelief can be advanced in the light of evidence to the contrary and the surrounding circumstances (*Balasingham v. Public Prosecutor*[3]).

As I have stated, the first information report, having been reduced into writing after the investigations had commenced, was not admissible in evidence. Its non-production therefore could not possibly raise any presumption under section 114(g) of the Evidence Ordinance.

The prosecution, to my mind, had produced evidence which, if unrebutted, warranted a conviction of the accused, particularly as the learned magistrate nowhere stated that he did not believe the evidence of P.W.1 and that of the other witnesses for the prosecution. It is true that Lim Kee Hoon and Zakaria were not called by the prosecution, but they were made available for the defence. There was thus a *prima facie* case for the accused to answer.

I would allow the appeal, set aside the order of acquittal and discharge and order that the respondent be tried before another magistrate.

Appeal allowed. Order of acquittal and discharge set aside. Re-trial ordered.

Solicitors: *Skrine & Co.*

WONG AH MEE v. PUBLIC PROSECUTOR

[A.Cr. (Pawan Ahmad J.) June 11, 1969]

[Ipoh — Criminal Appeal No. 21 of 1969]

Internal Security — Prohibited document — Possession without lawful excuse — Proof that document is a prohibited document — Internal Security Act, 1960, s. 22.

The appellant had been convicted for possession of a prohibited document. The facts were that the police raided the appellant's toyshop and found toy lorries with the words "Self-Reliance and Arduous Struggle" printed on them. It was contended on behalf of the prosecution that these words are quotations from the publication "Quotations from Chairman Mao Tse-Tung" which was a prohibited document. On appeal it was argued that the words are not quotations from the prohibited document. It appeared that the words appear only as a heading in the publication.